HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 21271 of 2006

DATED: 13-10-2006

Between:

M.Suresh Kumar

…Petitioner

and

The Deputy Commissioner,
Endowments Department,
Kurnool and others

…Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 21271 of 2006

ORAL ORDER:

The petitioner claims to be the owner and in peaceful possession and enjoyment of 0-14 cents in Sy.No.57/3 of Tirupati Town, Chittoor District by virtue of a registered sale deed dated 21-10-1994 whereunder the property was conveyed in his favour by his vendor who is claimed to have also purchased this property under a registered document. The 4th respondent-Mutt was also claiming this property among other properties belonging to it.

The 4th respondent who is the Custodian and the Deputy Commissioner of Endowments and was managing the 4th respondent-Mutt at that time, filed Writ Petition Nos. 28785 and 25862 of 1995 challenging the action of the Collector, Chittoor District, the Executive Officer, Tirumala Tirupathi Devasthanam and the Special Deputy Collector, Land Acquisition, Tirumala Tirupathi Devasthanam, Tirupathi in proposing to acquire land in Sy.No.57/3 of an extent of Ac.15-63 cents, allegedly without following the procedure under the Land Acquisition Act, 1894 and without payment of just compensation. The above writ petitions also assailed the conduct of the respondents 4 to 12 in encroaching upon the land in Sy.No.57/3 of an extent of Ac.15-63 cents belonging to the 4th respondent; sought a direction to the respondents to follow the due procedure under the Land

Acquisition Act and not to alienate or take over the 4th respondent-institution's properties.

The above writ petitions were disposed of by a Division Bench of this Court by the judgment dated 24-4-1997. This Court held that it cannot decide the disputes *inter se* between the 4th respondent and third parties and these has to be presented before the competent civil court. This Court also observed that if the 4th respondent feels that third parties have encroached on its land and have put up unauthorized constructions, it is open to the 4th respondent *to initiate appropriate proceedings against the third parties*. Likewise, if the third parties, including the unofficial respondents in the said writ petition, contend that the property belongs to them, they are at liberty to resist the same before the authorities concerned in appropriate proceedings, observed this Court. With regard to the TTD's proposal to acquire the land, the Division Bench observed that in case the TTD wants to acquire a portion of the land or the area where the buildings are put up and which is in occupation of persons other than the 4th respondent-Mutt or the respondents herein, it is open to those affected to oppose the TTD's action before the competent authority in an appropriate proceeding. The writ petitions were disposed of declaring that it is open to the TTD to proceed with acquisition proceedings in respect of that portion of the land, whose possession had already been taken and if possession is not yet taken, the TTD may proceed with the acquisition proceedings and may take possession and pay the prevailing market value as compensation together with all statutory benefits to the 4th respondent-Mutt or the persons interested therein. This Court specifically observed that the observations in the judgment by the Division Bench shall not be construed to be a pronouncement on the rights of the third parties in respect of the land said to be in their occupation or the rights of the 4th respondent-Mutt.

On text and intent, therefore, this Court did not decide that the

civil court alone had jurisdiction and the 4th respondent herein could proceed to take steps for eviction of encroachers only before the Civil Court. Indeed, the judgment of the Division Bench does not disclose facially or otherwise that it had considered the provisions of Section 83 and 151 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). Section 83 of the Act spells out the power and procedure on authorities specified to adjudicate on a complaint of encroachments on lands or building belongings to charitable or religious institutions or endowments and to pass appropriate orders for declaring them as encroachers and for eviction of such encroachers after following the due and prescribed procedure. Section 151 of the Act reads as under:

> **Sec. 151: Bar of Jurisdiction**:- No suit or other legal proceeding in respect of administration of management of an institution or endowment or any other matters of dispute for determining or deciding for which provision is made in the Act shall be instituted in any Court of Law except under and in conformity with the provisions of this Act.

It requires to be noticed that the petitioner herein is respondent No.62 in Writ Petition Nos. 28785 of 1995 which stood disposed of by the judgment of the Division Bench of this Court dated 24-4-1997, referred to supra.

The petitioner contends that the 4th respondent, after the judgment of the Division Bench above had filed 28 civil suits on the file of the Court of the Additional Senior Civil Judge, Tirupati including O.S.No. 70 of 1998 wherein the petitioner is arrayed as the 9th defendant and that the 'E' schedule property in O.S.No. 70 of 1998 is the very same land in the possession and enjoyment of the petitioner. The 4th respondent is also asserted to have obtained an order of status-quo in an interlocutory application – I.A.No. 187 of 1998 in O.S.No.70 of 1998, on 24-3-1998. O.S.No.70 of 1998 is pending

adjudication before the civil court concerned. It is also alleged that the 4th respondent, without mentioning about the civil suits filed by it, had filed the complaint under Section 83 (1) of the Act before the 2nd respondent who forwarded the same to the 1st respondent and the 1st respondent had initiated proceedings against the petitioner by issuing a notice dated 29-9-2006 in O.A.No.26 of 2006.

The notice dated 29-9-2006 issued by the 1st respondent in O.A.No.26 of 2006 is impeached in this writ petition on the grounds; (a) that the property in question belongs to the petitioner, is owned by him and is in his possession and occupation for a long on the basis of a registered sale deed and, therefore, he cannot be characterized as an encroacher. As the jurisdictional fact is mis-conceived so is the jurisdiction of the 1st respondent to adjudicate upon this lis, is presumably, the substantive contention of the petitioner on this aspect of the matter; and (b) that as the 4th respondent had instituted civil suits before the court of the learned Additional Senior Civil Judge, Tirupathi including O.S.No. 70 of 1998 whereat the petitioner herein is the 9th defendant and the plaintiffs therein have also obtained an ad-interim order of status-quo on 24-3-1998 in I.A.No.187 of 1998, the 4th respondent cannot, on principle or authority, pursue parallel proceedings and seek parallel remedies, one before the civil court of competent jurisdiction and the other before the statutory authority under Section 83 of the Act. It is also suggested by the petitioner that such parallel pursuit of remedies constitutes an abuse of the process of law.

The aforesaid contention does not commend acceptance by this Court. The 1st respondent-the Deputy Commissioner of Endowments is consecrated the power, authority and jurisdiction under Section 83 of the Act to entertain and adjudicate upon any claim presented by or

on behalf of a charitable or religious institution or endowment asserting occupation of its properties by encroachers and seeking their eviction. Section 83 enacts a fair and rationale procedure, consistent with principles of natural justice, affording of reasonable and adequate opportunity to a respondent to put-forth his objection or defence in the adjudicatory process, as a *sine qua non* to a determination on a claim by or on behalf of a charitable or religious institution or endowment that its property is occupied by an encroacher and such encroacher should be evicted. Section 151 of the Act bars the jurisdiction of a Court of law when a provision exists in the Act for determining or deciding any dispute. An adjudication by the civil court on a charitable and religious institutions and endowments claim that its property is encroached and the encroacher must be evicted would be inconsistent with the power, authority and jurisdiction of a Tribunal invested with special adjudicatory powers in this area under Section 83 of the Act. In view of the clear and explicit language of Sections 83 and 151 of the Act, the power, authority and jurisdiction of a civil court are pro-tanto excluded. Section 160 of the Act, immunized by a non-obstante provision confers over-riding efficacy to the provisions of the Act. The power, authority and jurisdiction of a civil court should, therefore be considered as eclipsed to the extent the area is occupied by the provisions of the Act.

In the above context of the legislative position, the entertainment of the civil suits by the Additional Senior Civil Judge, Tirupati, in particular of O.S.No. 70 of 1998 whereat the petitioner is arrayed as the 9th defendant or the order granting status-quo on 24-3-1998 in I.A.No.187 of 1998 in O.S.No.70 of 1998 would not constitute a fetter on the exclusive jurisdiction consecrated on the Deputy Commissioner concerned under Section 83 of the Act. The exclusive power, authority and jurisdiction are not eclipsed by defacto acts of courts of ordinary jurisdiction. The civil court is not a court of plenary jurisdiction nor is there anything expressed or implied, brought to the notice of this Court

in the order of ad-interim injunction issued by the civil court referred to supra, which chills or eclipses the jurisdiction of the Deputy Commissioner conferred under Section 83 of the Act, entrenched by the provisions of Section 151 of the Act and fortified by the over-riding effect given to the provisions of the Act under Section 160 thereof.

As the Deputy Commissioner of Endowments under Section 83 of the Act is a Tribunal having adjudicatory power following a quasi-judicial procedure, the jurisdiction includes a jurisdiction to determine a jurisdictional fact in the first instance, as to whether the property claimed to belong to the 4th respondent is in fact an endowment property liable to be adjudicated upon by an authority under the Act. Any erroneous decision rendered in the proceedings under Section 83 of the Act is liable to be corrected in appropriate proceedings. But such initial jurisdiction to pronounce upon a jurisdictional fact before proceeding to adjudicate or in the process of adjudicating the lis before it, is available even to a Tribunal of limited jurisdiction, is an established principle in public law.

For the aforesaid reasons, this Court discerns no merit in the writ petition. The writ petition is accordingly dismissed at the admission stage after hearing the learned Government Pleader for Endowments and the learned counsel for the 4th respondent.

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GODA RAGHURAM, J

13-10-2006
GRR